

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2005-_____

AMENDING THE WATER QUALITY CONTROL PLAN FOR
THE SACRAMENTO RIVER AND SAN JOAQUIN RIVER BASINS
FOR THE CONTROL OF MERCURY IN CACHE CREEK,
BEAR CREEK, SULPHUR CREEK, AND HARLEY GULCH

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region, (hereafter Central Valley Water Board) finds that:

1. In 1975 the Central Valley Water Board adopted a Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (hereafter Basin Plan), which has been amended occasionally.
2. The Basin Plan may be amended in accordance with the California Water Code Section 13240, et seq.
3. Water Code section 13241 authorizes the Central Valley Water Board to establish water quality objectives and Water Code section 13242 sets forth the requirements for a program for implementation for achieving water quality objectives.
4. Cache Creek, Bear Creek, Sulphur Creek, and Harley Gulch (hereafter Cache Creek watershed) have been identified under the federal Clean Water Act section 303(d) as impaired water bodies due to either elevated concentrations of mercury in water, methylmercury in fish tissue, or the existence of a fish consumption advisory. Pursuant to Clean Water Act section 303(d), a total maximum daily load (TMDL) is required to be developed that will bring the impaired water bodies into compliance with water quality standards.
5. The Central Valley Water Board recognizes that the Basin Plan does not include numeric water quality objectives for mercury or a plan to reduce mercury concentrations in the Cache Creek watershed, therefore, a Basin Plan amendment to adopt water quality objectives and an implementation program necessary to protect beneficial uses is appropriate.
6. The Central Valley Water Board has developed a water quality management program as a Basin Plan amendment to reduce the concentrations of methylmercury in fish tissue that is based on reducing the overall mercury and methylmercury loads to the Cache Creek watershed.

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7. The proposed amendment modifies Basin Plan Chapter II (Existing and Potential Beneficial Uses) to include commercial and sport fishing as a beneficial use designation for Cache Creek, North Fork Cache Creek, and Bear Creek.
8. The proposed amendment modifies Basin Plan Chapter III (Water Quality Objectives) to establish site-specific numeric objectives for methylmercury in fish in Cache Creek, Bear Creek, and Harley Gulch.
9. The proposed amendment modifies Basin Plan Chapter IV (Implementation) to establish a water quality management program to reduce mercury and methylmercury loads into the Cache Creek watershed.
10. The proposed amendment modifies Basin Plan Chapter V (Surveillance and Monitoring) to include a water, sediment, and fish tissue monitoring program to monitor progress in achieving mercury and methylmercury concentration reductions
11. The water quality objectives and water quality management program fulfill requirements set by the Clean Water Act Section 303 for TMDLs for Cache Creek, Bear Creek, and Harley Gulch. The water quality objectives are the TMDL targets for these water bodies.
12. The proposed amendment requires the owners of inactive mines to develop and implement plans to reduce mercury discharges from the mines, and it requires federal, state, and local agencies to develop and implement plans to reduce mercury and methylmercury loads from areas with mercury-contaminated sediments or methylmercury sources.
13. The Central Valley Water Board has considered the factors set forth in Water Code section 13241, including economic considerations, in developing this proposed amendment.
14. Central Valley Water Board staff developed a draft staff report and draft Basin Plan Amendment for external scientific peer review in November 2004 in accordance with Health and Safety Code Section 57004 and the draft final staff report and amendment have been modified to conform to the recommendations of the peer reviewers or staff has provided an explanation of why no modification was made in response to the comments.
15. The Central Valley Water Board finds that the scientific portions of the Basin Plan Amendment are based on sound scientific knowledge, methods, and practices in accordance with Health and Safety Code section 57004.
16. Central Valley Water Board staff developed a report for public comment and peer review and held a California Environmental Quality Act (CEQA) scoping meeting on 2 June 2004, the Central Valley Water Board held a workshop on 18 March 2005, and

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the Central Valley Water Board held public hearings on 23 June 2005 and ____ 2005 to consider the proposed amendment.

17. The basin planning process has been certified as “functionally equivalent” to CEQA requirements for preparing environmental documents and is, therefore, exempt from those requirements (Public Resources Code, section 21000 et seq. and Title 23 California Code of Regulations Division 3, Chapter 27, Article 6, beginning with Section 3775).
18. Central Valley Water Board staff completed an environmental checklist and functional equivalent document in compliance with the provisions of CEQA that concluded that the proposed amendment will have no potential for adverse effects, either individually or cumulatively, on wildlife or the environment.
19. Central Valley Water Board staff has circulated a Notice of Public Hearing, Notice of Filing, a written staff report, an environmental checklist, and a draft proposed amendment to interested individuals and public agencies for review and comment in accordance with state and federal environmental regulations (23 CCR section 3775, 40 CFR part 25, and 40 CFR part 131).
20. The proposed amendment will not result in degradation of Cache Creek water quality with respect to water quality currently achieved or provided for in the water body and maintains the level of water quality necessary to protect existing and anticipated beneficial uses.
21. The proposed amendment requires actions to be taken to reduce loads of total mercury and methyl mercury in the Cache Creek watershed. Such actions are of maximum benefit to the people of the state. Reduction of total mercury and methylmercury is necessary to protect human health that is affected by consumption of fish containing mercury and is necessary to protect wildlife, in particular certain birds, that consume fish containing mercury. The proposed amendment will not unreasonably affect present and anticipated beneficial uses nor result in water quality less than described in applicable policies because the amendment is intended to reduce over time levels of mercury in order to protect beneficial uses and achieve water quality objectives. The actions to be taken are not expected to cause other impacts on water quality.
22. This proposed amendment must be approved by the State Water Resources Control Board, the Office of Administrative Law, and the U.S. Environmental Protection Agency before becoming effective.
23. This regulatory action meets the “Necessity” standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).

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THEREFORE BE IT RESOLVED:

1. The Central Valley Water Board certifies the staff report and environmental checklist as a functional equivalent document pursuant to CEQA for the Basin Plan amendment.
2. Pursuant to Water Code sections 13240, et seq., the Central Valley Water Board, after considering the entire record, including oral testimony at the hearing, hereby approves the staff report and adopts an amendment to the Basin Plan to include commercial and sport fishing as a beneficial use, to establish site-specific numeric water quality objectives for methylmercury, and to establish a water quality management strategy to reduce mercury and methylmercury loads Cache Creek, Bear Creek, Sulphur Creek, and Harley Gulch as set forth in Attachment 1.
3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Water Resources Control Board in accordance with the requirements of Water Code Section 13245.
4. The Central Valley Water Board requests that the State Water Resources Control Board approve the Basin Plan amendment in accordance with the requirements of Water Code Sections 13245 and 13246 and forward it to the Office of Administrative Law and the U.S. Environmental Protection Agency.
5. If during its approval process the State Water Resources Control Board, or Office of Administrative Law, or U.S. Environmental Protection Agency determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Central Valley Water Board of any such changes.
6. The Executive Officer is authorized to sign a Certificate of Fee Exemption and following approval of the Basin Plan amendment by the Office of Administrative Law submit this Certificate in lieu of payment of the Department of Fish and Game filing fee to the Secretary for Resources.
7. Following approval of the Basin Plan amendment by the Office of Administrative Law, the Executive Officer shall file a Notice of Decision with the State Clearinghouse.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify that the forgoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on ____ October 2005.

THOMAS R. PINKOS, Executive Officer

Attachment: Attachment 1 Resolution No. R5-2005-